IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

FRIDAY, THE 12TH JANUARY 2007 / 22ND PAUSHA 1928

OP.No. 9100 of 2002(G)

PETITIONER:

HABEEB-UR-RAHIMAN MUNDOL,
AGED 53 YEARS, S/O.LATE ABDULLA MUNDOL,
P.O.THEKKIL, CHENGALA, KASARGOD VILLAGE, REP.
BY HIS POWER OF ATTORNEY HOLDER,ABDUL KHADER
MUNDOL,AGED 41 YEARS,S/O.LATE ABDULLA MUNDOL,
P.O.THEKKIL,CHENGALA, KASARGOD VILLAGE.

BY ADV. SRI.M.SASINDRAN
SRI.T.P.ELDHO

RESPONDENTS:
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1. THE DISTRICT COLLECTOR, KASARGOD.

2. THE REVENUE DIVISIONAL OFFICER(KASARGOD)
KANHANGAD.

3. THE TAHSILDAR, KASARGOD.

BY GOVERNMENT PLEADER SRI.C.K.GOVINDAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 12/01/2007 THE COURT ON 12/01/2007 DELIVERED THE FOLLOWING:

O.P. No.9100 of 2002 **APPENDIX**

Pettitioner's Exihibits

Ext.P1: A true copy of the notice issued by the Municipality for payment of tax on 17-9-1993

Ext.P2: A true copy of the order No.D2-4699/2001 dated 21-3-2001

Ext.P3: A true copy of the appeal memorandum before the 2nd respondent

Ext.P4: A true copy of the appeal vide proceedings No.D-3424/01 (KBTA 12/01) dated 25-7-2001

Ext.P5: A true copy of the revision petition dated 29-8-2001

Ext.P6; A true copy of the proceedings No.E4/34090/2001 dated 5-1-2002

Ext.P7: A true copy of the receipt dated 18-4-2001

Ext.P8: A true copy of the receipt dated 13-8-2001

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K.BALAKRISHNAN NAIR,J.

OP NO.9100 OF 2002-G

Judgment

The petitioner has constructed a three storeyed building in Kasaragod district. The construction of the ground floor and the first floor was completed by 10.07.1989. He obtained a permit for construction of an additional floor on 21.05.1991. Its construction was completed in 1993. Ext.P1 is the receipt issued by the local authority for payment of property tax. He has been assessed to building tax and an amount of Rs.1,06,200/- was demanded as building tax, as per Ext.P2. The petitioner filed Ext.P3 appeal before the Revenue Divisional Officer. That was dismissed by Ext.P4. He filed a revision before the District Collector, which is produced as Ext.P5. The said revision was dismissed by the District Collector by Ext.P6. This OP is filed, challenging Exts.P2, P4 and P6. When the construction of the respective floors was completed, is not in dispute. According to the respondents, the assessment was made after the appointed day i.e., 10.02.1992 and so, Section 5(2) of the Building Tax Act will govern the assessment. Section 5 (2) reads as follows :

> *"In the case of any building, the construction of which is completed prior to the appointed day, but the assessment of which has not been initiated or completed or against which appeal or revision has been filed, building tax shall be assessed on the basis of the plinth area at the rate specified in the Schedule."*

The writ petitioner would point out that the said provision has been struck down by this Court in ***Shirly v. State of Kerala*** (2006(2) KLT 306). The petitioner would submit that Sub-section (3) of Section 5 will govern his case. The said sub-section reads as follows :

> *"Where any major repair or improvement is made on or after the appointed day to a building constructed before the said date, building tax shall be payable at the rate referred to in sub-section (1) on the additional plinth area of the building resulting from such repair or improvement."*

2. The third respondent has filed a counter affidavit, supporting the impugned orders. In the counter affidavit, the contention of the respondents mentioned earlier, is reiterated, which was made on the basis of Sub-section 5(2) of the Building Tax Act.

3. I heard the learned counsel on both sides. In view of the decision of this Court in ***Shirly***'s case mentioned above, the respondents cannot rely on Section 5(2) of the Act. I feel that the contention of the petitioner that Section 5(3) will govern his case, has to be accepted. Since the assessment for the ground floor and the first floor was not made in time, the tax shall be levied for the same at the rate applicable in 1989, as those floors were constructed before the appointed day. Though Ext.P2 assessment order was passed in 2001, for the second floor, the assessment shall be made at the rate applicable in 1993. In the result, the impugned orders Exts.P2, P4 and P6 are quashed. The Tahsildar is directed to

make a fresh assessment of the tax payable by the petitioner in the light of the observations made herein above within one month from the date of receipt/production of a copy of this Judgment, after affording an opportunity of being heard to the petitioner. Needless to say, the tax if any remitted, shall be given credit, while raising the demand, based on the fresh assessment of tax.

The Original Petition is disposed of as above.

12.01.2007 **K.BALAKRISHNAN NAIR,JUDGE**

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